

RECORDATION NO. 25562 FILED

APR 26 '05

3-05 PM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD
ATTORNEYS AT LAW
1050 SEVENTEENTH STREET, N.W.
SUITE 301

WASHINGTON, D.C.

20036

(202) 393-2266

FAX (202) 393-2156

E-MAIL alvordlaw@aol.com

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

April 26, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Lease Agreement, dated as of April 15, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Lessor: Electro-Motive Diesel, Inc.
9310 West 55th Street
LaGrange, Illinois 60525-3211

Lessee: The Kansas City Southern Railway Company
114 West 11th Street
Kansas City, Missouri 64105

Mr. Vernon A. Williams
April 26, 2005
Page 2

A description of the railroad equipment covered by the enclosed document is:

3 SC70ACe Locomotives: GM 70, GM 71 and GM 73.

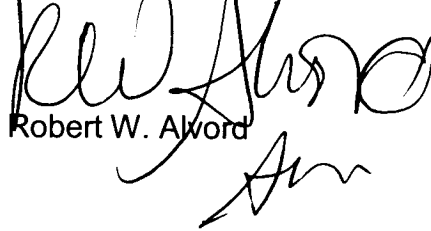
A short summary of the document to appear in the index is:

Lease Agreement.

Also enclosed is a check in the amount of \$32.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alword

RWA/anm
Enclosures

APR 26 '05

3-05 PM

SURFACE TRANSPORTATION BOARD

LEASE AGREEMENT

THIS AGREEMENT, made and entered into as of this 15th day of APRIL, 2005 by and between Electro-Motive Diesel, Inc., a Delaware corporation, hereinafter called "Owner", and The Kansas City Southern Railway Company, a Missouri corporation, hereinafter called "User", collectively referred to as "Parties."

OWNER AND USER HEREBY AGREE AS FOLLOWS:

1. Daily Rentals: User agrees to rent from Owner on a daily basis commencing on or after April 1, 2005 and ending December 31, 2005 (the "Lease Term") the Locomotives described in Exhibit A, together with all additions and accessories incorporated therein and/or affixed thereto (the "Locomotives"). Rental shall start immediately upon the execution of a "Certificate of Acceptance", Exhibit B. User shall return the Locomotives to Owner at a point on User's lines designated by Owner at the end of such term.

User will cause the Locomotives to be kept numbered with the identification numbers thereon at the time of their delivery hereunder and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of the Locomotive, in letters not less than one inch in height, the words "Electro-Motive Diesel, Inc. - Owner". User will not place any Locomotive in operation or exercise any control or dominion over the same unless such words are so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. User will not change the identification number of any Locomotive unless and until a statement of the new number to be substituted therefore shall have been filed with Owner and duly filed and deposited by User in all public offices where this Agreement shall have been filed and deposited.

User will not allow the name of any person, association or corporation to be placed on any Locomotive as a designation that might be interpreted as a claim of ownership during the term of this Lease. Unless previously terminated in accordance with the provisions of Section 22 herein, Lease will terminate on December 31, 2005 provided all Locomotives have been returned and all rentals have been paid pursuant to the terms hereof.

2.

TWR
(705)

During the Lease Term, per Owner's direction, User will return each Locomotive to Owner designated interchange point in Kansas City, Missouri in order for Owner to perform modification work at a designated repair facility. for the period of time that it is subject to modification work. No more than one Locomotive will be subject to modification work at any time.

nor shall this Agreement terminate or the obligations of User be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of the Locomotive or damage to or loss of possession or use or destruction of such Locomotive from whatever cause and of whatever duration, except as otherwise provided herein. User acknowledges that: Owner has no knowledge or information as to the condition or suitability for User's purpose of the Locomotives and Owner's decision to enter into this Agreement is made in reliance on User's undertakings herein.,

3. Warranties: THERE ARE NO WARRANTIES UNDER THIS LEASE.

5. Recordkeeping; Inspection: User agrees to keep and maintain and make available to Owner such record of User's use, operation, inspection, repairs and maintenance of the Locomotives while in its possession as shall be reasonably required by Owner.

If requested, within five (5) days of the end of the term of this Agreement, User will furnish to Owner a certificate signed by the chief mechanical officer of User setting forth the repairs performed on the Locomotives during the term hereof, and such other information regarding the condition and state of repair of the Locomotives as Owner may reasonably request. Owner, at its sole expense, shall have the right by its agents to enter upon the property of

TWR
(m)

User, accompanied by the User, to inspect the Locomotives and the User's records with respect thereto at such reasonable times as Owner may request during the term of this Agreement.

User shall promptly notify Owner of any occurrence of an event of default as defined in Section 19 hereof or default, specifying such event of default or default and the nature and status thereof.

6. Loss or Destruction: In the event that a Locomotive during the term hereof shall become lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use, or, in the reasonable opinion of User, worn out or damaged beyond the economic limit of repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by User for a period of thirty (30) consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), User shall notify Owner of such Casualty Occurrence.

7. Indemnity: User agrees to indemnify, protect and hold harmless Owner from and against all losses, damages, injuries, liabilities, claims (including, without limitations, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, penalties, and interest, arising from or caused directly by: (a) User's failure to promptly perform any of its obligations under the provisions of Sections 1, 2, 6, 7, and 18 of this Agreement, or (b) injury to person or property resulting from or based upon the actual or alleged use, operation, delivery or transportation of any Locomotive or its location or condition, or (c) inadequacy of any Locomotive, or any part thereof, for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business; and shall, at its own cost and expense, defend any and all suits which may be brought against Owner, either alone or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Owner in any such action or actions; provided, however, that (i) Owner shall give User written notice of any such claim or demand, and (ii) User shall not be required to indemnify, protect, hold harmless and defend Owner for any loss, damage, injury, liability, claim, demand or expense to the extent it results from the gross negligence or willful misconduct of Owner or to the extent such arises from Owner's failure to meet any of its problem correction, performance guarantee, or warranty obligations under Section 3 hereunder. The indemnities arising under this Section shall continue in full force and effect

TWR
(12)

notwithstanding the full payment of all obligations under this Agreement or the expiration or termination of this Agreement.

Except as otherwise expressly provided in this Agreement and subject to the same types of limitations set forth in clause (ii) of the first paragraph of this Section 7, User shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of the Locomotives.

8. Insurance: User shall obtain and maintain pursuant to the terms of this Agreement, at its sole expense, the following types of insurance coverage: (1) Commercial General Liability covering liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and blanket contractual liability - Any pollution exclusion must not apply to the liability of the insured for an accident that involves seepage, pollution or contamination, the sole cause of which is sudden, unintended and unexpected; (2) Commercial Property Insurance covering the full replacement cost value of the Equipment, but in no event less than the Casualty Value, for "all-risk" perils included in the standard special causes of loss form. Such insurance shall contain a waiver of subrogation against Owner and shall name Owner as Loss Payee as their interest may appear.

All policies of insurance procured by User herein shall be written as primary policies, not contributing with nor in excess of coverage that Owner may carry. If User's liability policies do not contain the standard separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

User shall provide Owner with a certificate of insurance evidencing compliance with the insurance requirements set forth above, either prior to or contemporaneously with the execution of this Lease Agreement. Certificate(s) will provide that Owner shall be named an additional insured on all liability policies. The certificate(s) shall provide that Owner will receive thirty (30) days prior written notice from the insurer of any termination or material reduction in the amount or scope of coverage.

Such certificates shall be in a form acceptable to, and underwritten by insurance companies reasonably satisfactory to Owner. By requiring insurance herein, Owner does not represent that coverage and limits will necessarily be adequate to protect User. The purchase of appropriate insurance coverage by User or the furnishing of certificate(s) of insurance shall not release User from its respective obligations or liabilities under this Agreement.

9. Compliance with Law; Repair and Maintenance; Return Condition: User shall comply with the FRA, and all other applicable laws, regulations and requirements with respect to use, maintenance and operation of the Locomotives during the term of this Agreement. User shall use the Locomotives only in the manner for which they were designed so as to subject them only to ordinary wear and tear.

TWR
(19)

User shall at its own cost and expense, maintain and service the Locomotives in accordance with Owner's published Maintenance Instructions including testing and repair of the Locomotives so that the Locomotives will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), and (b) in compliance with any and all applicable laws and regulations. In no event shall the Locomotives be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by User for similar equipment. Any parts installed or replacements made by User upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Owner, without cost or expense to Owner; provided, however, User may remove from the Locomotives any (a) communications equipment, (b) train control, (c) end of train telemetry, and (d) recording devices, which User paid for and installed but only if such removal may be accomplished without damage to the Locomotives.

Upon return of the Units at the end of the Lease Term, the Units shall be (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations and free from FRA Defects and (c) free from any liens or encumbrances granted or permitted by User. If the Units are not in such condition, User shall on demand reimburse Owner for the reasonable cost of putting them in such condition.

10. Assignment by User: User shall not assign or sublet its interest, or any parts thereof, under this Agreement, or permit the use or operation of the Locomotives subject to this Agreement by any other person, firm or corporation, other than wholly owned subsidiaries, without the prior written consent of Owner. Owner expressly consents to incidental operation and use on railroads other than Lessee's.
11. Notices: Unless otherwise specifically provided, any notices to be given under this Agreement or any other communications between the parties shall be given by certified mail, postage prepaid, or by facsimile, in the following manner:

- (a) Notices from Owner to User shall be sent to:

with a copy to:

or to such other address as User may from time to time indicate by written notice to Owner.

TUR
(200)

(b) Notices from User to Owner shall be sent to:

K. McCanless, Treasurer
Electro-Motive Diesel, Inc.
LaGrange, Illinois 60525
FAX: (708) 387-6312

12. Quiet Enjoyment: Except as provided in Section 22, so long as User makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, User shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by Owner or by any party lawfully claiming by or through Owner.
13. Authority: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Agreement and bind the respective parties to the terms and provisions hereof.
14. Protection of Owner's Title: User will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments reasonably requested by Owner, for the purpose of protecting Owner's title to the Locomotives. Upon termination of this Lease, at User's request Owner will provide a Lease Agreement Termination in the form of Exhibit C.
15. Taxes: User, or Owner at User's expense, shall report, pay and discharge, when due, all license and registration fees, assessments, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Locomotives including without limitation amounts payable under Sections 2, 6 and 7, hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Owner or User.
16. Performance of Obligations of User by Owner: In the event that the User shall fail duly and promptly to perform any of its obligations under the provisions of this Agreement, Owner may, at its option, perform the same for the account of User without thereby waiving such default, and any reasonable amount paid or expense (including reasonable attorneys' fees), penalty or other liability incurred by Owner in such performance.
17. Further Assurance: User shall execute and deliver to Owner, upon Owner's request such instruments and assurances as Owner reasonably deems necessary or advisable for the confirmation or perfection of this Agreement and Owner's rights hereunder.

TUR
(14)

18. User's Covenants: User will: (a) defend at User's own cost any action, proceeding or claim affecting the Locomotives except as stated in Section 7; (b) do everything necessary or expedient to preserve or perfect the Owner's interest in the Locomotives; (c) not misuse, fail to keep in good repair (ordinary wear and tear excepted), secrete, or, without the prior written consent of Owner and notwithstanding Owner's claim to proceeds, sell, rent, lend, encumber or transfer the Locomotives, except as provided in Subsection (e) of this Section; (d) agree that Owner may enter upon User's premises or wherever the Locomotives may be located at any reasonable time and upon reasonable notice to inspect the Locomotives; and (e) except as provided in Section 10 of this Agreement, not permit the use of the Locomotives by any other party, without Owner's consent to be granted in its sole discretion.

19. Default: An event of default shall occur if User:

(b) fails to perform or observe any covenant (as described in Section 18 above), condition or agreement to be performed or observed by it hereunder and such failure continues uncured for 15 days after written notice thereof to User by Owner; and (c) ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, takes any action seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceedings, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties; (d) fails to have dismissed, within sixty (60) days after the commencement thereof, any proceedings seeking the reorganization, arrangement, readjustment, liquidation or dissolution of User or any similar relief under any present or future statute, law or regulation; (e) fails to vacate the appointment of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties within sixty (60) days; or (f) attempts to remove, sell, transfer, encumber, part with possession or sublet any of the Locomotives in a manner prohibited hereunder without the consent of Owner.

Upon the occurrence of an event of default, Owner, at its option, may:

; (b) proceed by appropriate court action or action or other proceedings either at law or equity to enforce performance by the User of any and all covenants of this Agreement and to recover damages for the breach thereof; and (c) demand that User deliver all or any of the Locomotives forthwith to Owner at User's expense at such place as Owner may designate on User's Line. If any statute governing any proceedings hereunder specifies the amount of Owner's deficiency or other damages for breach of this Agreement by the User, Owner shall be entitled to provide as and for damages for the breach an amount equal to that allowed under such statute in lieu of any other damages for breach of this Agreement. The provisions of this paragraph shall be without prejudice to any rights given to Owner by such statute to provide for any amounts allowed thereby. Should any proceedings be instituted by or against Owner for monies due to Owner hereunder and/or for possession of any Locomotive or for any other relief, User shall pay a reasonable sum as attorneys' fees.

TWR
(77)

The remedies in this Agreement shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity except that neither party shall have a right to any remedy in excess of being made whole. User hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. User hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the User or on its behalf. Owner and User agree that Owner shall be entitled to all rights (such rights being fundamental to the willingness of Owner to enter into this Agreement) provided for in the Bankruptcy Code or of any other bankruptcy act, so that Owner shall have the right to take possession of any or all of the Locomotives upon any event of default under this Agreement regardless of whether User is in reorganization.

No failure to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

20. Choice of Law: This Agreement shall be governed in all respect by the Law of the state of Illinois.
21. Miscellaneous: All transportation charges incurred after acceptance by User shall be borne by User. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. User admits the receipt of a true copy of this Agreement.

TWR
(18)

IN WITNESS WHEREOF, each of the Parties hereto has caused this Lease Agreement to be duly executed and delivered as of the date first written above.

Date: _____, 2005 Electro-Motive Diesel

Attest: _____ By: 

Title: VP & General Counsel

Attest: _____ By: 

The Kansas City Southern
Railway Company

Title: Pres CEO

Approved:
Tom Healy 4-6-05

TWR
(700)

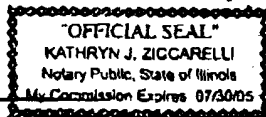
State of Illinois
County of Cook

On this 15th day of April, 2005, before me personally appeared Thomas W. Ridsman, to me personally known, who, being by me duly sworn, did say that he is a Vice President/General Counsel of Electro-Motive Diesel, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Kathryn J. Ziggarelli
Notary Public

My commission expires:

7/30/05

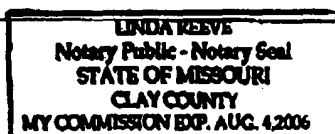


State of Missouri
County of Jackson

On this 6th day of April, 2005 before me personally appeared Arthur L. Shaener, to me personally known, who, being by me duly sworn, did say that he is a President/CEO of the KCSB, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Linda Reeve
Notary Public

My commission expires:



TJS
(10)

EXHIBIT A
ELECTRO-MOTIVE DIESEL, INC.

LaGrange, Illinois 60525

DESCRIPTION OF EQUIPMENT

<u>Type of Equipment</u>	<u>Quantity</u>	<u>Road Numbers</u>
SD70ACe 4300 HP Locomotives	three (3)	GM70 GM71 GM73

Delivery: 2005

T⁴⁸
(79)

EXHIBIT B

ELECTRO-MOTIVE DIESEL, INC.

LaGrange, Illinois 60525

ACCEPTANCE CERTIFICATE

I, the duly authorized representative for the _____ ("User") under the Lease of Locomotive Equipment, dated _____ (the "Lease"), do hereby certify that I have inspected and accepted delivery under the Lease of the following Units of Equipment:

TYPE OF LOCOMOTIVE: _____

PLACE ACCEPTED: _____

DATE ACCEPTED: _____

NUMBER OF UNITS: _____

MARKED: _____

ROAD NUMBER (S): _____

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications, requirements and standards applicable therefore as provided in the Lease.

Authorized Representative of User

TWR
(KB)

EXHIBIT C
ELECTRO-MOTIVE DIESEL, INC.

LaGrange, Illinois 60525

LEASE AGREEMENT TERMINATION
(FINAL)

This terminates the Lease Agreement, dated _____, ("Lease")
between _____, ("Railroad") a _____ corporation, and
Electro-Motive Diesel, Inc. ("EMD"), a Delaware corporation.

WHEREAS, Railroad and EMD executed the Lease which relates to the equipment
described in Exhibit A hereto ("Locomotives");

WHEREAS, the Lease was duly filed for recordation with the Surface Transportation Board
("STB") pursuant to 49 U.S.C. Section 11303, on _____ at
_____. Recordation No. _____.

WHEREAS, the parties hereto desire to terminate and cancel the Lease and to record this
termination and cancellation;

Now, THEREFORE, in consideration of the premises and other good and valuable
consideration, the receipt of which is acknowledged, Railroad and EMD agree as follows:

1. Railroad and EMD hereby terminate and cancel the Lease, effective
_____.
2. The parties agree to record this Agreement with the STB so as to
release the lien against the Locomotives constituted by the Lease.

TNR
(K2)

3. This Agreement may be executed by the parties in one or more counterparts (or upon separate signature pages bound together in one or more counterparts) shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Railroad and EMD have each caused this Termination Agreement to be duly executed by their authorized officers as of the day and year first above written.

The Kansas City Southern Railway
Company

ELECTRO-MOTIVE DIESEL, INC.

By: _____

By: _____

Title: _____

Title: _____

TWR
(4/8)